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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor Serial No.

W. Roy KNUWLES, M.D. 09/619,412 09/6191

Filing Date

19 July 2000

Title

Hair Loss Prevention

Group Art

1598

Examiner

Vickie KIM.

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FAX RECEIVED

MAR 2 9 2003

Office of Petitions Washington, DC 20231 Facsimile (703) 308-6916

PETITION'S OFFICE

BY FACSIMILE AND FIRST CLASS MAIL

Commissioner of Patents and Trademarks

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### **PETITION**

Applicants respectfully requests that the Appeal in this case be reinstated and the case forwarded to the Board of Patent Appeals & Interferences.

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### I. STATEMENT OF FACTS

The Examiner in this case is refusing to allow her actions to be reviewed by the Board of Patent Appeals and Interferences. The Office now has the opportunity to have the Examiner's actions reviewed inside the Patent & Trademark Office, by the Board, rather than outside the Office.

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W. Roy KNOWLES, M.D., Hair Loss Prevention Serial No. 09/619,412 PETITION (30-Mar-03)

- 2. This application has been the subject of *five* Office Actions. None raise any valid basis to denying the claims. The Examiner concedes this, but refuses repeatedly to allow the Board the opportunity to review her actions.
- 3. When this application was filed, it was accompanied by an Information Disclosure Statement and a Petition To Make Special making various references of record. The first Office Action conceded the claims were patentable over most of these (perhaps two dozen) references (e.g., Rajadhyaksha). The Office Action, however, rejected the claims over certain of them (e.g., Bazzano, Orentreich). In response, Applicant filed a Reply together with a Rule 131 Declaration and a Rule 132 Declaration.
- 4. The Examiner approved and entered the DECLARATIONS, and conceded the rejections raised in the first Office Action were baseless. The Examiner, however, then rejected the claims relying on a reference (Rajadhyaksha) which the Examiner (in the first Office Action) had already conceded does not enable the claims.
- 5. Applicant thus filed an Appeal. The APPEAL BRIEF Section I was titled, "Formalities." The Examiner refused to enter the APPEAL BRIEF. The Examiner said that while 37 C.F.R. 1.192 allows use of any "appropriate" heading, the Examiner requires headings which recite the Examiner's preferred phrasing verbatim. This obstructionism is not permitted by statute nor Rule; it was intended solely to delay or prevent review of the Examiner's work by the Board. Nonetheless, in a spirit of cooperation, Applicant changed the headings. The Examiner then entered the APPEAL BRIEF and held a conference with the PTO's Mr. Robert Hill, who advised the Examiner that her rejections were baseless.

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PETITION (30-Mar-03)

- 6. The Examiner accordingly refused to file any REPLY BRIEF, nor forward the case to the Board. Instead, over Applicant's objection, the Examiner reopened prosecution. Her third Office Action surprisingly rejected the claims on references already of record, already reviewed by her, and already conceded by her to be inapposite. Troublingly, the Examiner also said that the Declarations the Office had previously approved of and entered into the case were now considered defective. This is troubling, because the Office lacks legal authority to reject and remove from the record a Declaration the Office has already approved of and entered into the record.
- Nonetheless, Applicant filed an AMENDMENT.
- 8. The Examiner approved of and entered the AMENDMENT. Predictably, however, the claims were again rejected. Curiously, the fourth Office Action relied on references already of record in the prior three Office Actions, and conceded by the Examiner to be inapposite.
- Applicant thus (again) filed a NOTICE OF APPEAL and APPEAL BRIEF.
- 10. The Examiner refuses to file a REPLY BRIEF. This is not problematic; the M.P.E.P. does not require a REPLY BRIEF to be filed; where the Examiner refuses or declines to file one, the appeal is reviewed unopposed.
- 11. Very troubling, however, is the Examiner's disregard for M.P.E.P. deadlines. The M.P.E.P. requires the Examiner to act on the appeal within two months. Here, the Examiner sat on the file for *an entire year*, doing nothing at all, refusing to even forward the case to the Board.

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- 12. Now, the Examiner seeks to reopen prosecution again. She has issued a fifth OFFICE ACTION. It is as baseless as the previous four. It rejects the claims over references (e.g., Gibson, Bazzano, Orentreich, Grollier) and for reasons the previous four OFFICE ACTIONS have already conceded do not bar the claims.
- 13. More troublingly, the Examiner is again attempting to alter the P.T.O. record; she is trying to remove from the record the AMENDMENT the Office previously approved of and entered.
- 14. The Examiner is without legal authority to remove from the record an alreadyentered AMENDMENT, nor otherwise alter nor manipulate Office records.
- 15. The Examiner refuses to allow the Board to review her actions. This is understandable, as her work is arguably harassing, even vindictive. Nonetheless, the Office may prefer the Examiner's actions be reviewed internally, by the Board, rather than elsewhere.

#### II. POINT TO BE REVIEWED

16. Whether the Appeal may be reinstated and the APPEAL BRIEF forwarded to the Board for immediate review?

### III. ACTION REQUESTED

14. Applicants respectfully requests that:

A. the Examiner be prohibited from altering the existing prosecution file, and specifically be prohibited from attempting to remove from the record nor contest

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the validity of any AMENDMENT, DECLARATION or other submission previously accepted by the Office and entered into the file;

- B. the Appeal be reinstated and the Appeal Brief be forwarded immediately to the Board of Patent Appeals and Interferences for review;
- C. the Board be reminded that any ground for rejection which has already been raised by the Examiner and not maintained by the Examiner on appeal, operates as a concession by the Office that such ground is unfounded (i.e., the Board is estopped from re-litigating these issues); and
- D. the Board be instructed that its decision on the Appeal must be rendered within sixty calendar days after the filing date of this Petition.

#### IV. ENCLOSURES

17. I enclose a FEE TRANSMITTAL FORM together with the required petition fee.

Respectfully submitted,

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Patent Attorneys LLC Madison Avenue, 4th floor Attn: Mark POHL (P4014) Morristown, NJ 07960-7397 **ም (973) 984-0076** Mark Pohl@LicensingLaw.Net

30 March 2003

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	Application Number	WHO14,412 09/619142				
TRANSMITTAL	Filing Date	19 July 2000				
FORM	First Named Inventor	W. Roy KNOWLES, M.D.				
(to be used for all correspondence after initial filing)	Group Aπ Unit	1598				
	Examiner Name	Vickie KIM				
Total Number of Pages in This Submission	Attorney Docket Number	KnowlTech				
ENCL	OSURES (check a	all that apply)				
(for an A	nent Papers Application)	After Allowance Communication to Group  Appeal Communication to Board				
Fee Attached Drawing	(\$)	of Appeals and Interferences				
Amendment / Reply	g-related Papers	Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)				
After Final Petition		Proprietary Information				
Affidavits/declaration(s) Provision	to Convert to a nal Application	Status Letter				
Extension of Time Request Address	Power of Attorney, Revocation Change of Correspondence Address Other Enclosure(s) (please identify below):					
Express Abandonment Request	Express Abandonment Request  Request for Refund					
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Firm Pharmaceutical Patent Attorneys, LLC  or Pohl & Assoc.						
Signature A Wal III						
Date See below date						
CERTIFICATE OF MAILING						
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date:						
Typed or printed name Marin POHL, Rcs No. 35(3)						
Signature 2 11 (W	- Date	30 March 03				

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The submitted papers are enumerated on the enclosed Transmittal Form, PTO Form SB/21.

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Approved for use through 10/31/2002; OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

# **FEE TRANSMITTAL** for FY 2002

9739846159

Patent fees are subject to annual revision.

**TOTAL AMOUNT OF PAYMENT** 

(\$) 130.00

Complete if Known		
'Application Number	09/619,142	
Filing Date	19 July 2000	
First Named Inventor	W. Roy KNOWLES, M.D.	
Examiner Name	Vickie KIM	
Group Art Unit	1598	
Attorney Docket No.	KnowlTech Inc.	

METHOD OF PAYMENT	FEE CALCULATION (CONTINUED)				
The Commissioner is hereby authorized to charge	3. ADDITIONAL FEES MAD	2 9 2003			
Deposit Deposit	wai ga Ollian	2 / 2005			
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Charge Any Additional Fee Required	127 50 227 25 Surcharge - lata provisional filing fee or cover sheet	0.00			
Under 37 CFR 1.16 and 1.17	139 130 139 130 Non-English specification	0.00			
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2. Payment Enclosed:	112 920° 112 920° Requesting publication of SIR prior to	0.00			
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1. BASIC FILING FEE	115 110 215 55 Extension for repty within first month	0.00			
Large Entity Small Entity	116 400 216 200 Extension for reply within second month	0.00			
Fee Fee Fee Fee Description Code (\$) Code (\$) Fee Paid	117 920 217 460 Extension for reply within third month	0.00			
464 740 704 870 (6/1) 6/1-5-	118 1,440 218 720 Extension for reply within fourth month	0.00			
106 330 208 185 Design filling fee 0.00	128 1,960 228 980 Extension for reply within fifth month	0.00			
107 510 207 255 Plant filing fee	119 320 219 160 Notice of Appeal	0.00			
108 740 208 370 Reissue filing fee	120 320 220 160 Filling a brief in support of an appeal	0.00			
114 160 214 RO Provisional filing fee	121 280 221 140 Request for oral hearing	0.00			
SUBTOTAL (1) (\$) 0.00	138 1,510 138 1,510 Petition to institute a public use proceeding	-			
2. EXTRA CLAIM FEES	140 110 240 55 Petition to revive - unavoidable	0.00			
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Name (Print/Type) Mark POHL,	sq. 1	Registration No. 35,325	Telophone	(973) 984-0076
Signature 1 Visi	L. U.		Date	30 March 03

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